IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8812 OF 2004

Trinity Engineers Pvt. Ltd. .... Petitioner
Vs.
Rajan F. Pardeshi .... Respondent

Shri D.J. Bhange for the Petitioner.

Shri I.R. Kulkarni for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 15, 2004

P.C:

1. Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the judgment and order dated 19-8-2004 passed in the Complaint (ULP) No.32 of 2002 allowing the complaint filed by the respondent and holding that the petitioner has committed unfair labour practice under Items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as "the said Act", and further has directed to desist from committing such unfair labour practice as well as to refund the amount of Rs.45,000/- along with interest at the rate of 6% per annum from the date of complaint till its realisation within two months from

the date of the order. The challenge to the impugned judgment is on two counts. Firstly, the respondent is not an employee within meaning of the said expression under the said Act and secondly, the deduction of the amount from the salary of the respondent does not amount to unfair labour practice as the same was lawfully deducted, besides that such deduction had commenced about three years prior to the filing of the complaint. The learned Advocate for the petitioner, however, has fairly conceded that the petitioner had not raised the issue of limitation nor the same is sought to be raised in this petition in relation to the complaint filed by the respondent.

3. Large number of decisions are also sought to be relied upon in support of the contention that the respondent is not the employee of the petitioner considering the duties performed by the respondent.

4. The Industrial Court, on analysis of the evidence on record, has clearly held that the respondent is an employee under Section 3(5) of the said Act and as such the complaint at his instance is maintainable. The Industrial Court has also held that the petitioner has not been able to establish that the company was lawfully entitled to deduct the amount from the wages payable to the respondent and, therefore, has committed unfair

labour practice under Items 9 and 10 of Schedule IV of the said Act.

5. Drawing attention to the testimony of the manager of the petitioner, it was sought to be argued on behalf of the petitioner that undisputedly the statement of facts by the said manager discloses that the duties performed by the respondent were of supervisory and administrative nature and he used to control the despatch work as well as recommend the leave in relation to the four employees working under him and also used to take their attendance. Attention is also drawn in that regard to the copies of the documents which were produced before the Industrial Court while contending that the same were either ignored or not properly appreciated by the Industrial Court.

6. Perusal of the testimony of the manager of the petitioner, however, discloses that the respondent was merely carrying out the despatch work as per the schedule given to him and he had no say in the matter of either despatch work or in the matter of allotment of the work to the four employees stated to have been under him nor he had power to grant leave to those persons. Even as to the documentation which was required to be prepared at the time of loading of the trucks, the same was required to be signed by the manager who was,

admittedly, the authorised signatory in respect of the documentation pertaining to the despatch work. Apart from himself, the said manager has categorically stated that the M.D., Jt. M.D., Company Secretary and Sr. Accountant were the authorised officer for the purpose of signing of the documents. Considering this evidence on record, I do not find any illegality committed by the Industrial Court in holding that the duties performed by the respondent do not disclose any work having been carried out in administrative capacity as such, so as to exclude him from the category of employee under the said Act.

7. The Apex Court in **S.K. Maini v. Carona Sahu Co. Ltd. & Ors.,** reported in 1994 II CLR 359, had clearly observed that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee and the determinative factor is the main duties of the employee concerned and not some works incidentally done by him. In **H.R. Adyanthaya etc. etc. v. Sandoz (India) Ltd. etc. etc.,** reported in 1994 II CLR 552, it was held that a person to be a workman under the Industrial Disputes Act, 1947 must be employed to do the work of any of the categories, namely, manual, unskilled, skilled, technical, operational, clerical or supervisory and it is not enough that he is not covered by either of

the four exceptions to the definition. That was a case in relation to the medical representative and in that regard it was held that medical representatives are not workmen within the definition of Section 2(s) of the Industrial Disputes Act. In **John Joseph Khokar v. B.S. Bhadange and two others,** reported in 1997 II CLR 921, the learned single Judge of this Court, considering that the employee therein had to see that the job allotted to the workmen was done by them as well as whenever overtime was required to be taken from the workmen, the said employee used to take the decision as to who amongst the workers should be asked to do the overtime as also on the basis of the specification attached to the post which was occupied by the employee and which was placed on record by the management disclose that the employee used to instruct the workmen wherever necessary on the correct method of carrying out the specific jobs and if necessary, used to demonstrate such methods. Further, he was required to follow up all the jobs under his charge and to ensure that the work progresses satisfactorily. He was also required to ensure that correct tools and material are available to the workmen under him as required and that the work is being carried out by them correctly according to his instructions. He was required to inspect the completed work and the work in progress and to ensure that the work was correct to the specifications. Considering the same, it was held

that he was not a workman in terms of the definition under the Industrial Disputes Act. In **G.M. Pillai v. A.P. Lakhanikar, Judge, 3rd Labour Court and others,** reported 1998 (78) F.L.R. 593, it was a case of Superintendent, Quality Control and considering the duties assigned to the post and performed by him and the evidence in that regard, it was held that he was not a workman within the meaning of the said expression under the Industrial Disputes Act. In **Union Carbide (India) Ltd. v. D. Samuel & Ors.,** reported in 1998 II CLR 736, the case related to maintenance supervisor and considering the evidence produced by the parties on record, it was held that he did not fit in the definition of workman under Section 2(s) of the Industrial Disputes Act. In **Ganesh Prasad Pandey v. K.W. Thakre & Anr.,** reported in 1999 I CLR 78, it was the case of an accountant who was held by the Labour Court to be not a workman under Section 2(s) of the Industrial Disputes Act. Further considering all the case laws on the point in issue and the overall duties required to be discharged by the said accountant, the learned single Judge did not find fault with the finding arrived at by the Labour Court that the employee was not a workman under Section 2(s) of the Industrial Disputes Act. In **Union Carbide (India) Ltd. v. Ramesh Kumbla & Ors.,** reported in 1999 I CLR 193, it was again the case of a supervisor in the Electrical Maintenance Department

who claimed to be a workman and had filed complaint making grievance about adoption of unfair labour practices by the employer. The Labour Court had allowed the complaint. The learned single Judge of this Court, however, having regard to the overwhelming evidence on record, both oral and documentary, held that only one conclusion which was possible was that the complainant was employed in supervisory capacity drawing salary exceeding the prescribed limit and that as such he was not a workman and therefore not an employee under Section 3(5) of the Industrial Disputes Act. In **German Remedies Limited v. Michael Gabriel Lopes & Anr.,** reported in 1999 I CLR 458, the termination of services of Michael was sought to be challenged claiming to be a workman which was upheld by the Labour Court. In writ petition, considering that Michael was performing the duties of liaison officer as well as the duties attached to his job, clearly empowered by the management and one could see that it was expected of him by the management that he would exercise his discretion in the best interest of the company, it was held that he would clearly fall into the category of a person working in the supervisory category and he was admittedly drawing salary exceeding Rs.1600/- and he could not fit in the definition of workman under Section 2(s) of the Industrial Disputes Act. All these decisions were delivered in the peculiar facts of the respective cases

and are of no help to the petitioner in support of the contention that the finding arrived at by the Industrial Court regarding the respondent to be an employee within the meaning of the said expression under the said Act is not borne out from the records. On the contrary, the very testimony of the manager of the petitioner, which was readover by the learned Advocate for the petitioner, clearly justifies the finding arrived at by the Industrial Court.

8. As regards the second ground of challenge, the Industrial Court, on analysis of the evidence, has found that there was deduction of Rs.45,000/- from the wages of the respondent. No justifiable cause nor any statutory provision is disclosed under which the petitioner was unilaterally entitled to deduct such amount from the wages of the respondent. Undisputedly, there was no lawful proceedings initiated or conducted prior to deducting such amount from the wages of the respondent. Being so, the deduction was per se illegal and therefore no fault can be found with the finding of the Industrial Court about the unfair labour practices on that count by the petitioner towards the respondent.

9. Since the findings arrived at by the Courts below being clearly borne out from the records and they are not perverse findings, there is no case for interference

in the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution of India and, therefore, the petition fails and is rejected.

10. Certified copy expedited.